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Teachers' professional and legal rights in their relationship with pupils, parents, and the school committee.

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TEACHERS' PROFESSIONAL AND LEGAL RIGHTS
IN THEIR RELATIONSHIP WITH PUPILS,
PARENTS, AND THE SCHOOL COMMITTEE

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TEACHERS' PROFESSIONAL AND LEGAL
RIGHTS IN THEIR RELATIONSHIP
WITH PUPILS, PARENTS, AND
THE SCHOOL COMMITTEE

by

Walter L. Hansen

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CHAPTER I

INTRODUCTION

Every teacher should have some knowledge of his relationship with the pupils, parents, and school committee early in his teaching career. There is a definite lack of concise information on this subject and it is hoped that the material of this study will prove to be both instructive and valuable to the members of the teaching profession.

To understand the relationship of the teacher to these entities, it is necessary to know in what body is vested the power to establish and maintain free public education. The Constitution of the United States did not delegate powers to the nation to establish public schools, nor did it prohibit the states from establishing such schools. It was, consequently, reserved for the state or its people¹ to establish opportunities for education.

It has been generally conceded that the parent has the natural right to direct the education of his child,² but it is also a matter of state function. The framers of the various state constitu-

1 Marshall vs. Donovan 10 Bush. 681

2 Commonwealth vs. Roberts 159 Mass. 372

tions, including Massachusetts, provided in their charters for spreading the opportunities of education through a system of free public schools. The establishment and maintenance of these schools is a function of the state government. People of the various towns and cities have an interest in their public schools, but, as a matter of fact, these schools are state institutions subject to the control and supervision through acts passed by the State Legislature.

The Legislature of Massachusetts has the power to create a central agency in complete control of the school system. Massachusetts has not seen fit to do so. It has conferred upon a body of public officers, known as the school committee, the authority to administer local education. Although these members are elected locally, they are, in fact, agents of the state and have been given broad powers. All matters of school rules and policies not specifically provided by legislature rests with the reasonable rules of the school committee.

The responsibility of selecting the members of the local school committee has been placed upon the

public. If they find they have elected members who are not qualified, they have the opportunity to replace these members at the next election. This is also true of legislators. In this regard the public has broad powers in respect to the types of education they desire for their children.

The rules governing the relationships of the teachers with the pupil, parent, and school committee come from three sources.

1. The enactments of state legislature.
2. The rules of the local school committee.
3. The decisions of the Courts.

The school committee may make rules and regulations for the management of schools under its supervision. To be legally effective these rules must conform to the provisions of the State and Federal Constitutions, to the laws enacted by the State, and to the interpretations announced by the Courts. Should there be a question as to such conformity, the decisions should again rest with the Courts by appeal to a higher Court.

Some laws have been made by the State to govern school matters. Often these laws may be doubtful as to their meaning and constitutionality. Where

such cases arise, they are then referred to the Attorney General for his opinion or interpretation. This opinion serves merely as a guide until they are superceded by a Court decision.

Many cases have been tried in our courts. These cases, as they bear upon the three relationships named, are to be reviewed in this paper and some general summaries made for teachers' advantage in understanding their rights and obligations.

CHAPTER II
RELATIONSHIP BETWEEN THE TEACHER AND THE
SCHOOL COMMITTEE

Probationary Period. (Part 1)

The authority to appoint teachers is conferred on the school committee by Chapter 71, Section 38 of the General Laws. This law states that the school committee shall contract with teachers, shall receive satisfactory evidence of their moral character, their qualifications for teaching and their capacity for the government of the schools.

Chapter 71, Section 59 states:- The superintendent shall be the executive officer of the school committee, shall have care and supervision of the public schools, shall assist in keeping accounts and records, and shall recommend to the committee, teachers, textbooks and courses of study. While this section provides that the superintendent shall recommend teachers to the school committee, our Court has held that the committee, as the employer, is not obliged to accept the recommendation of the superintendent.

This controversy first came to light in the case

of School District, #10 in Uxbridge vs. Richard¹ Mowry and others in 1862, Chief Justice Allen presiding.

The members of the prudential committee of the School District of Uxbridge employed a teacher but the school committee refused to grant her a teaching certificate. The prudential committee informed the school committee that they would not employ or present another person; the school committee, after waiting two months, employed a teacher, examined her, and gave her a certificate, took possession of the school house and established a school.

Upon these facts the prudential committee contended that the defendants were not authorized to exercise the power of appointing a teacher, or to take possession of the school house. The Chief Justice instructed the jury that the school committee was justified in their act.

Other cases that have been tried on this subject are:- Elba Sherburne, Sheldon vs. School Committee of Hopedale and Edward J. Russell vs. John Gannon.

The Sheldon case was tried in 1931 before Chief

Justice Rugg and Judges Carroll, Wait, and Field.¹
Miss Sherburne talked to the Superintendent of
Schools in Hopedale of her approaching marriage.
The Superintendent assured her that if she married
it would have no effect upon her position and he
thought that married teachers were the best and
would keep her on. The Court ruled that this did
not prevent the School Committee, subsequently,
acting in good faith and in compliance with the
powers as to management of the public schools
even where they must first seek the advice of the
Superintendent.

The Russell vs. Gannon case was tried before
Chief Justice Rugg and Judges Crosby, Donahue, and
Lummus in 1932 and 1933.² The decision in this
case was as follows: "A vote of the School Committee
of Pittsfield that the office of Assistant Super-
intendent of Schools be created, and their elec-
tion of a certain teacher in the high school to
that office, were controlling; and even if the
committee sought advice of the Superintendent as
to whom they should elect, they were not bound to

1 276 Mass. 230

2 281 Mass. 298

follow his advice and the Superintendent was bound to recognize as assistant the person whom they chose."

Establishment of Standards for Appointment.

The school committee has the power to establish standards for appointment of teachers. In the case of School District, #10 of Uxbridge vs. Mowry and others¹ the Court said: "It is obvious that a teacher might have the literary requirements and the capacity to govern, and be a person of good moral character, and yet be an unfit person for the service required. The teacher might be of such a reputation as would prevent the attendance of pupils. He might be too severe in his requirements; unskilled in imparting knowledge, or unable to appreciate the difficulties of beginners. All of these considerations might very well be regarded by the committee in determining his qualifications for teaching.

Religious and Political Views.

Religious and political tests are barred by Chapter 71, Section 39 of the General Laws. It states

that no public school committee shall inquire or solicit from an applicant for a position any information as to his religious or political beliefs and that no appointment shall be effected by his beliefs.

Minumum Salary for Teachers.

Chapter 71, Section 40 of the General Laws as amended in 1921, regulates the minumum salary to be paid teachers employed in the public schools, except persons in training or those employed as temporary substitutes, shall be at the rate of not less than seven hundred and fifty dollars for the school year.

Teachers' Oath Law.

After appointment and before entering upon his duties, a teacher is required by Chapter 71, Section 20A, as amended in 1935, to take an oath of allegiance to the Constitution of the Commonwealth of Massachusetts. This oath must be taken before an officer authorized by law to administer oaths, or before the superintendent of schools, or a member of the school committee. The oath must be signed in duplicate, one copy is held by the school committee, while the other is filed with the State Department of Education.

Contracts.

Upon appointment and through the probationary period, it is the practice of the school committee to contract with teachers. Such contracts usually cover a period of one school year.

In order to be enforceable the agreement between the committee and the teacher must contain all the essentials of a valid contract. In some states the law requires the contract to be in writing. In this case an oral contract will not suffice. There is no statutory requirement in Massachusetts that a teacher's contract shall be written. An oral contract will be enforced. However, teachers' contracts are usually reduced to writing and should cover requirements of the service.

Teachers' Retirement Association.

The Teachers' Retirement Association was established on July 1, 1914. All teachers thereafter entering the services of the public schools of Massachusetts are required to become members of the Association. Persons who entered the service prior to July 1, 1914 may become members but are not required to do so. The members are governed by the provisions

of the Retirement Act, General Laws, Chapter 32, Sections 6 to 19. Retirement is compulsory at the end of the school year in which the member attains the age of seventy years. Retirement may be granted at any time after the member attains the age of sixty years. Teachers who have not become members of the Association are not required to retire at the age of seventy.

Rights of Teachers During Probationary Period.

During the probationary period the teacher's rights as to his position and salary are contractual. Upon the expiration of the contract the school committee is under no obligation to re-employ the teacher for another year. They are not required to give any explanation as to their failure to re-employ the teacher for another year.

While the contract is in force the teacher may be discharged only for cause excusing the committee from its part in the contract. Discharge without cause is a breach of contract and the teacher may hold the municipality responsible for damages. In the case of a discharge there is no provision for a hearing unless the teacher's contract so provides.

Tenure Period. (Part 2)

Tenure is a status which teachers attain upon fulfilling conditions imposed by the tenure statute. It is a creation of the Legislature and can be gained or lost only in the manner provided.

The purpose of tenure is not for the granting of special privileges to the teacher but for the promotion of good order and welfare of the state and of the school system by preventing the removal of capable and experienced teachers at the personal or political whims of the changing office holders.

How Tenure is Obtained.

Chapter 71, Section 41 states:- Every school committee, except in Boston, in electing a teacher or superintendent who has served the three previous consecutive years, shall employ him to serve at its discretion; but any school committee may elect a teacher who has served not less than one year to serve at such discretion.

The Legislature has provided a period of probation to afford the school committee an opportunity of forming an estimate of the teacher's ability. If the committee is dissatisfied with the teacher, it may, at the

end of any probation year, refuse to renew contract.

The probationary period must be three consecutive years of service immediately preceding the year of service for which the teacher receives his next appointment. The entire period must have been spent in the service of the same employer. Where a teacher has merely transferred from one school to another under the same committee's jurisdiction, the period of service in the two schools, if consecutive, may be added together to satisfy the statutory requirements as to probation.

Upon appointment a teacher is subject not only to the educational laws of the State but also to the reasonable rules of the school committee. All teachers are expected to be aware of the practices in the system where they teach whether they have found their way into print or not. It has been held that a rule made by the committee member and approved informally by others is enforceable. In the case of Clara Russell vs. Inhabitants of Lynnfield,¹ tried in 1874 before Judges Ames and Levens. One member of the school committee made a rule that if a pupil was tardy twice the teacher should send the pupil to him.

1 116 Mass. 365

The other members assented to the rule verbally. The teacher excluded Clara Russell for refusing to comply with this rule. The Judge held that there was no exclusion although there was no record made of the order of the committee.

Again in the case of Vanita Alford vs. Inhabitants of Chester tried in 1901 before Judge Lawton¹ this decision was again upheld.

Vaneta Alford was five years old and wished to enter school for the first time in April. She was excluded because of her age and the date which she tried to enter school. Judge Lawton ruled:- "The right of every child to attend school is not qualified but but is subject to the reasonable rules of the school committee as to the number and qualifications."

"A regulation by the school committee that children under the age of seven must enter a certain school at the beginning of the fall term is a reasonable rule, and a child excluded in accordance with it has no remedy. The rules of the committee do not have to be in written form."

Private Lives of Teachers May be Effected by
Committee Rules.

To a certain extent the school committee may regulate the private lives of teachers.

1. It may regulate the type of employment during vacation periods. In the case of Miss Horasko vs. School Committee of Mount Pleasant, Pennsylvania¹ tried before Judge Lynn in 1939. Miss Horasko was dismissed on evidence that she acted as a waitress in a beer parlor. She drank in the presence of pupils, and shook dice with customers for drinks. This was found to justify her dismissal on grounds of incompetency.

2. The school committee may also regulate the employment of married women. In the case of Clara Rinaldo vs. School Committee of Revere tried before Chief Justice Rugg and Judges Pierce, Field, Lumsus, and Qua² in 1936. It was held that after the school committee has adopted a policy forbidding the employment of married women teachers, the marriage of a woman teacher employed at the discretion, properly, may be found to be "good cause" for her dismissal under Chapter 71, Section 42 of the General Laws as amended by Statute 1934, Chapter 123.

1 6 Atlantic 866
2 234 Mass. 167

3. The school committee may regulate the place of residence. Margaret Stuart vs. School Committee¹ of San Francisco, California.

The School Committee made a rule that all teachers should reside in the city. Miss Stuart refused to live within the city and was dismissed. She brought action against the School Committee. The Court ruled that it was a reasonable regulation and that her refusal to comply with this reasonable rule was insubordination.

The test of the enforcability of a committee rule is its reasonableness. The courts uphold the rules of the committee made in good faith. No rules of the committee will be upheld that violates the laws of the State or the rights of the teacher.

In the case of Horne vs. School Committee of Chester, New Hampshire tried before Judge Pike in 1910.² The school board made a condition that if Miss Horne were to be hired as a teacher she would board at a certain house, and she did so for five weeks. She then informed the board that circumstances had arisen which made her unwilling to board any longer at the designated house. She was told

1 118 Pac. 712

2 75 Alt. 431

that she must remain at the house if she were to continue to teach. She was dismissed. The Court ruled that the school board could not fix a teacher's boarding place, and make residence of the teacher at such a place a condition of her contract of employment.

Payment of Salary Over a Twelve Months Period.

Some cities and towns pay their teachers over a twelve months period. It seems that the parties intended that the salary for the school year should be extended over the twelve months period. In the case of Donlin vs. City of Boston this was not true.¹ Esther Donlin's husband was a teacher in Boston. He was under contract for a year. His salary was to be paid during twelve monthly payments. Donlin died during the summer vacation and his last month's pay was held from his wife. She sued for the remaining pay. The Court ruled:- "A contract with a city, to perform duties as a teacher is a contract for personal services and terminates by the teacher's death. Where a teacher is employed for a year at a fixed salary payable in monthly instalments, dies during

the vacation when he has completed all the services required of him for that year, nothing is due his executor for the last month, his contract for services having been terminated by his death.

Rights of Teachers Under Tenure.

Chapter 71, Section 42 of the General Laws gives the teacher certain rights in the case of dismissal. The school committee may dismiss any teacher but it must be by two-thirds vote of the entire committee. The personal causes here stated are inefficiency, incapacity, conduct unbecoming a teacher, insubordination, or other good cause. The Committee must give at least a thirty-days notice, exclusive of customary vacation periods, to the teacher before the meeting at which the vote is to be taken. If he so requires, the teacher shall be furnished with written charge of the cause for his dismissal. If he requests, he must be given a hearing before the school committee. The hearing may be private or public at the discretion of the school committee. At the meeting the teacher may be represented by council, present evidence, call witnesses to testify in his behalf and examine them. The committee is not obliged to vote on dismissal at the meeting at which

the hearing is held. The charges of the committee must be substantiated. In the case of dismissal of a teacher the superintendent must make recommendations to the committee.

Prior to the Amendment of 1934, to Chapter 71, Section 42 which added that the charges must be substantiated, the committee in good faith could dismiss a teacher without legal cause. Though the testimony at the hearing was favorable to the teacher, the committee could disbelieve it, and if it is so honestly, that was sufficient. This point was demonstrated in the case of Carrington vs. School Committee of New Bedford tried before Chief Justice Lugg and¹ Judges Braley, Pierce, Sanderson in 1924. Alice T. Carrington had been Principal of a school in New Bedford for twelve years. The School Committee voted her dismissal. They received a request from Miss Carrigan for a statement of its reasons for dismissal. In response, they stated the reasons to be:- "The Committee's dissatisfaction with her work and the belief that she had not demonstrated constructive leadership and the necessary administrative capacity." The Court ruled that the Committee had complied with

the General Laws, Chapter 71, Section 42 as amended by Statute 1921, Chapter 293, as to the statement of reasons, and cannot be required to give further satisfaction.

1934 Amendment Regarding Substantiation of Charges
Against Teacher.

By this amendment, which added that the charges must be substantiated, the teachers in the State have been given much protection in the security of their positions. This was brought to light in the case of Monroe Graves vs. School Committee of Wellesly tried on December 27, 1937 before Chief Justice Lugg and¹ Judges Field, Donahue, and Lummus. Monroe Graves, Superintendent, was asked to resign. He refused this request and asked for a statement of the charges and a hearing. At the hearing it was announced that the School Committee would not call witnesses or produce no other evidence in substantiation of the charges. All the evidence and testimony were favorable to Mr. Graves. The Court ruled that he could not be discharged as the charges had not been substantiated.

This decision marks a great advancement in the protection of teachers on tenure. The school commit-

tee can no longer dismiss a teacher on charges that are not supported by evidence. Of course, if the teacher realizes the charges are well-founded and is given the opportunity to resign he should do so. If however, he feels that the charges are not well-founded he should not resign, but should secure legal advice for his protection under Chapter 71, section 42 as amended in 1934.

Discharge for Non-Personal Reasons.

Chapter 71, Section 42 has provided reasons other than personal for the discharge of teachers. The committee has a right to dismiss a teacher whenever an actual decrease in the number of pupils in the schools of the town renders such action advisable.

Right of the School Committee to Determine Who Shall
be Dismissed.

In the case of George Bates vs. Board of Education of San Francisco tried before Judge John Hunt in 1903¹ a decision was rendered on this subject. George Bates was on tenure. The School Board consolidated classes and dismissed George Bates as his position then ceased to exist. The Court ruled that the Board

¹ 123 Cal. 145

of Education, in the interest of economy, or for any other good and sufficient reason, may reduce the number of classes; and this being so they have the power of determining what teacher, in such an event, shall be retired.

From this decision it would seem that the school committee is not required to dismiss the teachers on probation first. In Massachusetts the school committee could put their one-year teachers on tenure and dismiss the older tenure teachers.

Abolition of Certain Positions.

The case of Miss Downey vs. School Committee of Lowell was tried in 1940 before Chief Justice Field¹ and Judges Lummus, Qua, and Cox. Miss Downey was elected Principal of the Edison Grammar School in 1929. She served as Principal until 1937 at a salary of \$3800 per year. Edison School was closed in the interest of economy. Miss Downey was then assigned to teach in another school and continued to receive the same salary. In 1938 her salary was reduced to the pay of grade teachers, namely \$1700. The Court ruled:- "It was not in violation of Chapter 71, Section 42 for the School Committee upon

closing a grammar school, to assign its Principal as teacher in another school. The reduction in her salary was not a violation of Chapter 71, Section 43 because she was the only person in that salary grade."

Salaries of Teachers Protected by Tenure Law.

Chapter 71, Section 43 provides that "the salary of no teacher employed in any town except Boston to serve at discretion shall be reduced without his consent except by a general salary revision affecting equally all teachers in the same salary grade in the town." The term salary grade has been clarified in the case of Paquette vs. Fall River tried before Chief Justice Rugg and Judges Crosby, Wait, Sanderson, and Field in 1932.¹ The plaintiffs were teachers. Each had been elected to tenure. The School Committee voted to reduce salaries of all teachers by an amount equal to twenty per cent, excepting those who had not been employed for more than three years and who had not been elected to serve at its discretion.

The Court ruled that action of the School Committee of Fall River was not a violation of the General Laws, Chapter 71, Section 43, although no reduction

1 278 Mass. 172

was made in the salaries of some of the teachers who were receiving the same amount of salary as that received by others who were effected by the vote, where it appeared that none of those not suffering a reduction had come within the terms of General Laws, Chapter 71, Section 41, and having been elected to serve at discretion. Identity of the amount of salary was not the sole test of validity under Section 43 of the action of the Committee.

In the Downey case the Court said:- "The fact that the petitioner was chosen as a grammar school principal, and was paid the same salary as other principals, does not show that she was in the same salary grade as the others after her school was closed and theirs left open."

CHAPTER III

RELATIONSHIP BETWEEN THE TEACHER, THE PARENT, AND THE PUPIL.

The duty of the teacher to instruct pupils in his classes is found on his contract with the school committee, and, there being no contract between the parents of the pupils sent to a public school and the teacher, a teacher of such a school is not liable to any action by a parent for refusing to instruct her children. But the teacher is answerable to the school committee and may be dealt with as the facts and circumstances of the case warrant.¹ (Spear vs. Cummings). From this statement we may assume that the teacher is not directly responsible to the parents but is responsible to the school committee who in turn is responsible to the public.

Who May Attend School.

Chapter 71, Section 1 of the General Laws states:-
"Every child between seven and sixteen, shall, subject to Section 15, attend a public day school, approved by the school committee, during the entire year the public schools are in session, but such attendance

1 23 Pick. 224

shall not be required of a child whose physical or mental condition is such to render attendance inexpedient or impractical, or who is being otherwise instructed in a manner approved in advance by the superintendent or school committee. The school committee of each town shall provide for and enforce the school attendance of all children actually residing in accordance therewith."

The Court ruled in the Alford case¹ that the right of every child to attend public schools is not an unqualified right, but is subject to such reasonable regulations as to the numbers and qualifications of the pupils to be submitted and to other school matters as the school committee shall from time to time prescribe. In this case the school committee had adopted a regulation that children under the age of seven years must enter school at the beginning of the fall term. The Court found this to be a reasonable rule and a child excluded in accordance with it has no remedy.

Prescribed Subjects.

Legislature has stated various subjects which

must be taught in the public schools. It is often the policy of school officials to have other prescribed subjects which are required in addition to some non-required subjects. The Courts have not been in agreement on the question whether the parent or the school committee have the right to select the subjects for the pupil.

Establishment of Standards for Promotion.

The school committee has the authority to establish and maintain standards of promotion. This was¹ tried in the case of Barnard vs. Shelburne. The case was tried for damages for unlawful exclusion from school. Barnard entered the freshmen class at Shelburne and at once began to fall below the required standards of work. In December, his father had a written notice to take him from high school. It was suggested that he be put in a ninth grade school in town. The Committee had a rule that two or more studies below 60% meant demotion of one grade-- in his case dropped from high school. The Court ruled that the School Committee had the authority to establish and maintain standards. There was no unlawful exclusion from school as Barnard was not

1 216 Mass. 19

excluded from school but merely demoted.

Granting of Diploma.

It is within the power of the school committee to determine who is entitled to a diploma symbolic of the satisfactory completion of the prescribed subjects. This was brought out in the case of Sweitzer vs. Fisher tried before Judge Applegate in 1915.¹ Floyd Sweitzer was refused a diploma from the high school at Van Meter, Iowa. His name appeared on the graduation list with three other graduates. He was on the stage the night of graduation and had been given the customary "dummy diploma". Three months later the regular diplomas were delivered to three of the graduates, but delivery was refused Sweitzer. The Court ruled that where the Board refused to graduate on grounds that his grades were insufficient that the plaintiff's only remedy is an appeal to the county superintendent.

Here again the rules of the School Committee must be reasonable. In the case of Valentine vs. School District of Iowa;² Miss Valentine was a senior who

1 154 N. W. 465

2 183 N. W. 434

had completed her courses. Her deportment was good and she had been named valedictorian of her class. She was denied a diploma because she refused to wear a cap and gown at the exercises. Her refusal was not in defiance of authority, but the cap did not fit her and the odor from fumigation made her sick. The Court ruled that requiring of wearing caps and gowns as a condition of graduation was unreasonable. The Court conceded that the school authorities may "deny the right of a graduate to participate in the public ceremonial of graduation unless a cap and gown is worn."

Control of Pupils.

The power of the school authorities over pupils, except for the parent's right of control, extends to all acts detrimental to the best interests of the school, whether committed in school hours or after pupils return home. ¹ Gott vs. Berea College. But parental authority must be respected as in the case ² of Hobbs vs. Germany. The school committee made a rule that all pupils must remain in their homes for study between the hours of seven and nine and

¹ 156 Ky. 376

² 49 So. 515

prescribed corporal punishment for violation of this rule. The Court ruled that:- "A rule of the school committee which invades the home and wrests from the parents their right to control their child around his own hearthstone is inconsistent."

Suspension from School.

Chapter 76, Section 44 of the General Laws states:- "The parent, guardian or custodian of a child refused admission to or excluded from the public schools shall on application be furnished by the school committee with a written statement of the reasons therefor, and thereafter, if the refusal to admit or exclusion was unlawful, such a child may recover from the town in tort, and may examine any member of the committee or any officer of the town, upon interrogatories".

Chapter 76, Section 17 states:- "A school committee shall not permanently exclude a pupil from the public schools for alleged misconduct without first giving him or his parent or guardian an opportunity to be heard.

The school committee has the power to suspend a child permanently but he first must give the par-

ent or guardian an opportunity to be heard. The school committee has, however, the power to suspend temporarily. In Massachusetts the teacher has the power to suspend temporarily unless forbidden by the school committee. Cases on this subject are as follows: Hodgkins vs. Rockport, 1870,¹ "The School Committee has the authority to exercise in good faith, to exclude a pupil from a public school for misconduct which injures discipline and management." Watson vs. City of Cambridge, 1833,² "Whether certain acts of disorder so seriously interfere with school that one who persists in them, either voluntarily or by reason of imbecility, should be expelled, is question for the school committee and not receivable by the jury."

Infliction of Corporal Punishment.

The right to inflict corporal punishment, when not restrained by committee rules, is based on the delegation of parental authority. The teacher's rights in this respect is limited to his jurisdiction as a teacher. The use of corporal punishment is not restrained in Massachusetts but many school committees have certain rules on this subject that

1 105 Mass. 475

2 157 Mass. 561

must be followed by the teacher.

Liability for Accidents to Pupils.

In the case of Fulgoni vs. Johnston tried before Chief Justice Field and Judges Lummus, ¹Qua, Lolan, and Ronan in 1928 the Court found that the negligence of a teacher in a public school towards a student experienced in the use of a band saw located in the teacher's room but not furnished by him, was not warrented by evidence that the teacher gave the student permission to use the saw and that after several hours use the student was injured through a maladjustment of the saw. For their own protection, teachers should be very thorough in their instructions and where the work is dangerous the teacher should give close supervision.

Rendering First Aid.

The teacher should make his decision on the circumstances of the injury. The teacher at the time stands in the position of the parent. If the teacher tries to render service which only a doctor should render he will be answerable for any damage to the pupil.

REVIEW OF CASES CITED IN THIS PAPER

Alford vs. Inhabitants of Chester

Lawton, J. 180 Mass. 20 1901

Vaneta Alford was five years old and wished to enter school for beginners in April. She was excluded because of her age and the date she tried to enter school. Judge Lawton ruled, "The right of every child to enter school is not qualified but is subject to the reasonable rules of the school committee as to the numbers and qualifications."

A regulation adopted by the school committee that children under the age of seven must enter a certain school at the beginning of the fall term is a reasonable rule, and a child excluded in accordance with it has no remedy.

The rules of the committee do not have to be written.

Bachelor vs. City of Salem

Fletcher 4 Cushing's Reports 533 1846

The power conferred on the school committee to select and contract with teachers of the town and district, includes the power to fix compensation to be paid them, and to bind the city to pay same.

Bates vs. Board of Education, San Francisco, Cal.

Hunt, J. 139 Cal. 145 1903

George Bates was on tenure. The Board of Education consolidated classes and dismissed George Bates as his position then ceased to exist. The Court ruled that the Board of Education, in the interest of economy, or for any other good and suf-

ficient reason, may reduce the number of classes; and this being so they have the power of determining what teacher in such an event shall be retired, and it would be absurd that any teacher should draw pay without performing any services.

Boody vs. School Committee of Barnstable

Present: Rugg, Crosby, Pierce, Wait, and Field

276 Mass. 134

May-June, 1931

Boody was elected as supervising principal of a junior and senior high school. The School Committee then voted to change his duties to those of teacher of certain subjects in the high school, without a change of salary. The vote was taken without notice to him, and was a majority vote of the School Committee. The Court ruled, "There was no distinction between a principal and teacher and that the vote of the committee was within its powers although taken by a majority vote."

Carrigan vs. School Committee of New Bedford

Present: Rugg, Braley, Pierce, and Sanderson

250 Mass. 334

November, 1924

Alice T. Carrigan had been Principal of a school in New Bedford for twelve years. The School Committee voted her dismissal. They received a request from Miss Carrigan for a statement of its reason for dismissal. In response they stated the reasons to be, "The Committee's dissatisfaction with her work and the belief that she had not demonstrated constructive leadership and the necessary administrative capacity." The Court ruled that the Committee had complied with the General Laws, Chapter 71, Section 42 as amended by St. 1921 c 233 as to the statement of reasons, and cannot be required to give further specifications.

Clifford vs. School Committee of Lynn

Present: Rugg, Pierce, Wait, and Sanderson

275 Mass. 258

1931

Lella Clifford was dismissed as a teacher in 1927. She brought a writ against the School Committee directing that she be reinstated as a teacher. By the time her case came to Court she had been elected to the School Committee. The Court ruled that by becoming a member of the School Committee in the city, the petitioner was ineligible to hold a position of teacher in that school system.

Donlan vs. City of Boston

Present: Rugg, Braley, Pierce, DeCoursey and Carroll

223 Mass. 225

1916

Esther Donlan's husband was a teacher in Boston. He was under contract for a year. His salary was to be paid during twelve monthly payments. Donlan died during the summer vacation and his last month's pay was held from his wife. She sued. The Court ruled a contract for personal services terminates with the teacher's death. Where a teacher is employed for a year at a fixed salary payable in monthly instalments, dies during the vacation when he has completed all the services required of him for that year, nothing is due his executor for the last month, his contract for services having been terminated by his death.

Downey vs. School Committee of Lowell

Present: Field, Lunnus, Qua, and Cox

1940 Adv. Sheet 391

February, 1940

Miss Downey was elected Principal of the Edison Grammar school in 1929. She served as Principal un-

til 1937 at a salary of \$3000 per year. Edison school was closed in the interest of economy. Miss Downey was then assigned to teach in another school and continued to receive the same salary. In 1938 her salary was reduced to the pay of a grade teacher, namely, \$1700. The Court ruled, "The reduction was not in violation of Chapter 71, Section 42 for a School Committee upon closing a grammar school to assign its Principal as teacher in another school. That the reduction in her salary was not a violation of Chapter 71, Section 42 because she was the only person in that salary grade."

Fulgoni vs. Johnston

Present: Field, Lummus, Qua, Dolan, and Ronan

248 Mass. 468

February, 1933

Fulgoni was a pupil in Medford Vocational School. His leg came in contact with an unguarded band saw while operating same. He sued the teacher for liability due to negligence of a teacher in a public school towards a student experienced in the use of a band saw located in the teacher's room but not furnished by him, was not warranted by evidence that the teacher gave the student permission to use the saw and that after several hours' use the student was injured through a maladjustment of the saw.

Gardner and Others vs. Charlestown

Gray

98 Mass. 587

December, 1887

The City Council of Charlestown appropriated a definite sum of money for the salary of teachers. The money was not sufficient to carry through the year. The teachers worked and sued for their wages. The Court ruled, "The power of the School Committee to fix compensation of teachers and bind the city to pay for same, cannot be controlled by the City Council except by voting to close the schools after they have been open the required time set by law."

Graves vs. School Committee of Wellesley

Present: Rugg, Field, Donahue, and Lunnus

1927 Adv. Sheets 1827

December, 1927

Monroe Graves, Superintendent, was asked to resign. He refused and asked for a written statement of the charges for his dismissal. He also asked for a hearing. At the hearing it was announced that the School Committee would not call witnesses or produce no other evidence in substantiation of the so-called charges. All evidence and testimony presented were favorable to the petitioner. He was not discharged as the charges were not substantiated.

Guernsey vs. Pitkin

Chief Justice Redfield

22 Vt. 224

1860

George Guernsey was 18 years old and attended a district school in Vermont. The teacher required written compositions at specific dates. He refused to write them. The teacher asked him to bring an excuse from his father stating that he should not be required to write papers. The teacher received no answer to this request. George would not write the papers and the teacher refused to instruct him. The Court ruled that the request to write compositions was a reasonable one; and if such a pupil, in absence of any request from his parents that he may be excused from so doing, refuse to comply with such a requirement, he may be expelled from school on that account.

Horne vs. School District, Chester, New Hampshire

Justice Lunn

75 Atl. 431

1910

The School Board made it a condition that if Miss Horne were to be hired as a teacher she should board at a certain house, and she did so for the first

five weeks. She then informed a member of the Board that circumstances had arisen which made it impossible to board any longer at the designated house. She was told that she must remain at the house if she were to continue to teach. She was dismissed. The Court ruled that a School Board could not fix a teacher's boarding place, and make residence of the teacher at such a place a condition of her contract of employment.

Horosko vs. School Committee of Mount Pleasant, Pa.

J. Pike

6 Atl. 866

1939

Miss Horosko was dismissed on evidence that she acted as a waitress in a beer place. She drank in the presence of pupils, and shook dice with customers for drinks. This justified her dismissal on grounds of incompetency.

McDevett vs. School Committee of Malden

1937 Adv. Sheets 1252

238 Mass. 217

May, 1937

On December 17, 1935 the School Committee elected the petitioner as Principal of Lincoln Junior High School to begin work on January 10, 1936. It was voted that his salary be fixed at \$2000 per year. On January 6, 1936 after a City election had brought about a change in the personnel of the Board, the new Board voted that the Superintendent be instructed not to recognize the vote of December 17. The Court ruled that the second vote of the Committee did not dismiss the petitioner from the teaching force. It did no more than revoke the vote of December 17, which in any event by its terms was no to go into practical effect until January 10 and which therefore never became effective at all. It was within the power of the Committee to do this.

Mowry and Others vs. School District #10 in Uxbridge

Judge Allen

1862

The members of the Prudential Committee of School District # 10 of Uxbridge employed a teacher but the School Committee refused to grant her a teaching certificate. The Prudential Committee informed the School Committee that they would not employ or present another person; the School Committee, after waiting two months, employed a teacher, examined her and gave her a certificate, took possession of the school house and established a school.

Upon these facts, the Prudential Committee contended that the defendants were not authorized to exercise the power of appointing a teacher, or to take possession of the school house. The Chief Justice instructed the jury that the School Board was justified in their act.

Paquette vs. Fall River

Present: Rugg, Crosby, Wait, Sanderson, and Field

278 Mass. 172

January, 1932

The Plaintiffs were teachers. Each had been elected to tenure. The School Committee voted to reduce salaries of all teachers by an amount equal to twenty per cent, excepting those who had not been employed for more than three years and who had not been elected to serve at its discretion.

Action by the School Committee of Fall River was not a violation of the General Laws, Chapter 71, Section 43, although no reduction was made in salaries of some teachers who were receiving the same amount of salary as that received by others who were effected by the vote, where it appeared that none of those suffering a reduction had come within the terms of General Laws, Chapter 71, Section 41, and been elected to serve at discretion; Identity of the amount of salary was not the sole test of validity under Section 43 of the action of the Committee.

Pulvino vs. Town of Yarmouth and Others

Present: Crosby, Pierce, Wait, Field, and Donahue

286 Mass. 21

March, 1934

In the towns of Yarmouth, Dennis and Brewster, Mr. Stacey was elected Superintendent of Schools. At an annual meeting of the Joint Committee of the three towns voted that the matter of a teacher of music and art be left with Mr. Stacey. Mr. Pulvino received a contract from the Superintendent which stated, "You may have the appointment as music supervisor in this District at \$1600 per year." The contract was signed by the Superintendent.

A few days after he had reported dissatisfaction of the Supervisor's work to the Joint Committee, and after they had voted to drop Mr. Pulvino, he was asked to resign but he refused. Each Committee then notified him that his services would not be needed after December 31. The Court ruled that the plaintiff never held a valid contract. Powers and duties of a Superintendency Union do not extend to election of teachers. The Union could not endow the Superintendent with powers it did not itself possess. Nor could the several School Committees bind their towns by joint contracts. In employing and fixing compensation each town committee must act independently.

Renaldo vs. School Committee of Revere

Present: Rugg, Pierce, Field, Lumsus and Qua

294 Mass. 137

February, 1936

After the School Committee has adopted a policy forbidding the employment of married women teachers, the marriage of a woman teacher employed at discretion properly may be found to be "good cause" for her dismissal under General Laws, Chapter 71, Section 42 as amended by Statute 1934, c 123.

Russell vs. Inhabitants of Lyndsville

Judges Ames and Devens 116 Mass. 305 1874

One member of the School Committee made a rule that if a pupil was tardy twice the teacher should send the pupil to him. The other members of the Committee assented to the rule verbally. The teacher excluded Clara Russell for refusing to comply with this rule. The Judge held that there was no unlawful exclusion although there was no record made of the order of the committee.

School Committee of Pittsfield vs. John F. Gannon

Judges: Rugg, Crosby, Lonahue, and Lunnus

221 Mass. 238 1922-1923

A vote of the School Committee of Pittsfield that the office of Assistant Superintendent of Schools be created, and their election of a certain teacher in High School to that office were controlling; and even if the Committee sought advice of the Superintendent as to whom they should elect, they were not bound to follow his advice and the Superintendent was bound to recognize as Assistant the person whom they chose.

Sherburne-Sheldon vs. School Committee of Hopedale

Present: Rugg, Carroll, Whit, and Field

278 Mass. 220 April, 1921

Miss Sherburne talked to the Superintendent of Schools in Hopedale of her approaching marriage. The Superintendent assured her that it would have no effect upon her position and that he thought married teachers were the best and would keep her on. The Court ruled that this did not prevent the School Committee, subsequently, acting in good faith and in compliance with their powers as to management of public schools even where they must first seek the advice of the superintendent.

Stuart vs. School Committee of San Francisco, Cal.

118 Pac. 712

The School Board made a rule that all teachers should reside in the City. Miss Stuart refused to live within the City and was dismissed. She brought action against the School Board. The Court ruled that it was a reasonable regulation of the School Board and that her refusal to comply with this reasonable rule was insubordination.

Sweitzer vs. Fisher

154 N. W. 405

October, 1915

Floyd Sweitzer was refused a diploma from the High School at Van Meter, Iowa. His name appeared on the graduation list with the three other graduates. He was on the stage the night of graduation and had been given the customary "dummy diploma". Three months later the regular diplomas were delivered to three of the graduates, but delivery was refused to Sweitzer. The Court ruled that where the Board refused to graduate on grounds that his grades were insufficient that the plaintiff's only remedy was an appeal to the County Superintendent.

Toothaker vs. School Committee of Rockland

Present: Braley, Crosby, Pierce, Carroll, and Sanderson

256 Mass 584

June, 1926

The School Committee notified Mr. Toothaker, Superintendent, that a vote would be taken on his dismissal. He asked for a statement of their reasons and for a hearing. This was given. The Court held that notice of the intention of the Committee on dismissal was sufficient grounds for dismissal.

Wood vs. Inhabitants of Medford

Judges: Colt and Ames

123 Mass. 545

January, 1874

Wood received a contract to teach in a high school for \$1200 from July 7, 1873 to July 7, 1874. The Committee voted to close the school and discharge the teacher. The defendant contended that under General Laws, Chapter 38, Section 25 the School Committee had power to discharge the plaintiff at any time, at its discretion, without assigning any reason. The Judge ruled, "If a person employed by the School Committee of a town to teach before expiration of that time, dismissed by the School Committee, under General Laws, Chapter 38, Paragraph 25 he cannot maintain an action against the town for compensation for the remainder of the year."

Approved by

Harold W. Smith

C. J. Wellen

Graduate Committee

Date Mar. 28, 1942

